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Tutthill (Sir G. L.)

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VINDICIÆ MEDICÆ;

OR

A DEFENCE

OF THE

COLLEGE OF PHYSICIANS.



LONDON:

LONGMAN, REES, ORME, BROWN, GREEN, AND
LONGMAN,

PATERNOSTER-ROW.

1834.

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G. WOODFALL, ANGEL COURT, SKINNER STREET, LONDON.

TO

SIR HENRY HALFORD, BART. M.D.

G.C.H. F.R.S.

PRESIDENT OF THE ROYAL COLLEGE OF PHYSICIANS, PHYSICIAN TO THEIR
MAJESTIES, ETC., ETC., ETC.

DEAR SIR HENRY,

MAY I beg you to accept this defence of the College, both as a tribute of duty and as a token of regard? There is no one who is more devoted to the interests of the College than yourself, nor is there any one who has contributed more largely to its fame. But you so much excel all others in that kind of writing which you have undertaken to adorn, that I should have felt an invincible reluctance to submit myself to your judgment,

had I not known that a rare facility in discerning the errors of others is usually combined with an indulgent disposition to forgive them, and that by the expression of sentiments which may claim a near kindred to your own, I may confirm the friendship with which you honour me.

I remain, Dear Sir Henry,

Your most obliged and

Faithful friend,

GEO. L. TUTHILL.

24, Cavendish Square,
April 25th, 1834.

THE FOLLOWING PETITION having been presented to both Houses of Parliament during the present session, it becomes important that the allegations which it contains should be carefully investigated, in order that their exact value may be ascertained and demonstrated; and if the observations which have resulted from this investigation be just, the College of Physicians has nothing to fear from discussion. It may continue to confide in the favour of the Crown, in the support of His Majesty's Government, and in the protection of Parliament.

THE PETITION

OF THE UNDERSIGNED PHYSICIANS, PRACTISING
IN LONDON,

HUMBLY SHEWETH,

I. THAT the Charter of the Royal College of Physicians of London was granted by Henry the Eighth, for the advancement of Medical Science and for the protection of the public

“ against the temerity of wicked men, and the practice of the ignorant.”

II. That six physicians were named in the Charter, who, together with all men of the same Faculty then resident in London, were constituted one body, commonalty, or perpetual College.

III. That the perpetuity of the College was to be kept up by the future admission of all men of the same Faculty into the College.

IV. That several of the six physicians named in the Charter, studied at, and possessed degrees from, foreign Universities; and that no distinction is mentioned, as regards the University where a physician may have obtained his degree.

V. That all physicians entitled to practise in London, are equally entitled, under the Charter, to admission to the Fellowship of the College.

VI. Your petitioners are prepared to show, that bye-laws have been framed, and long acted upon, by the College, which are directly opposed to, and in violation of, the letter and meaning of the said Charter.

VII. That the physicians practising in

London are invidiously divided, by the bye-laws of the College, into two orders: one is denominated Fellows; the other, constituting by far the majority, is designated (and by implication degraded) by the term Licentiates.

VIII. That the Fellows have usurped all the corporate power, offices, privileges, and emoluments, attached to the College; that the Licentiates do not participate in these benefits, but are illegally excluded from all the offices, and any share in the management of the Corporation; and so far is this principle of exclusion carried, that the Licentiates are not even admitted to the library or museum of the College.

IX. That there exists no foundation in the Charter, or in the Acts confirming it, for such distinction of orders, and consequent exclusion from all privileges.

X. That, according to one of the bye-laws, no physician can claim admission as a Fellow, unless he has graduated, or been admitted *ad eundem*, at the Universities of Oxford or Cambridge, where medicine is imperfectly taught; while physicians who have graduated at other British or Foreign Universities, celebrated as

schools of medicine, are unjustly excluded from the Fellowship by this obnoxious bye-law.

XI. That the College was admonished from the Bench, by the Lord Chief Justice Mansfield, to amend their bye-laws in reference to the admission of Licentiates into the Fellowship; that, influenced by this censure, the College framed other bye-laws, deceptive in their character, which, whenever they have been acted upon, have tended still further to depress and injure the order of Licentiates.

XII. That the College demand and receive a large sum of money from the Fellows and Licentiates, for the supposed privilege of practising as physicians within a circuit of seven miles round London, and that they do not and cannot protect them in this privilege.

XIII. That the Graduates of Oxford and Cambridge are obliged to be members of the established Church of England, and, consequently, all dissenters are excluded from claiming the Fellowship; this your petitioners consider as a grievous injustice, and an act of intolerance unbecoming the present age.

XIV. That these invidious bye-laws, made

in the spirit of corporate monopoly, have involved the College in continued litigation, and created a jealousy between the Fellows and Licentiates discreditable to the members of a liberal profession.

XV. That your petitioners, with deference, submit, that the College of Physicians, as at present constituted, is wholly inadequate to the due regulation of the medical profession in this country, and the protection of the public;—and further, that the Charter of the College in no way provides for the practice of physicians in the several counties of England and Wales.

Confiding in the wisdom of Parliament, your petitioners therefore pray, that your Honourable House will institute such inquiry into the state of the medical profession in this country, and the College of Physicians in particular, as will lead to the framing of laws, by which the evils complained of may be removed.

And your petitioners will ever pray, &c.

GILBERT BLANE.
H. CLUTTERBUCK.
G. BIRKBECK.
W. SOMERVILLE.
A. MORISON.
THOMAS BROWN.

A. HENDERSON.
C. F. FORBES.
CHARLES LOCOCK.
NEIL ARNOTT.
R. MACLEOD.
JOHN VETCH.

W. GAIRDNER.
W. RUSSELL.
HUGH LEY.
JAMES CLARK.
ROBERT LEE.
MARSHALL HALL.
W. WHYMPER.
THOMAS HODGKIN.
C. J. B. WILLIAMS.
A. TWEEDIE.
HENRY DAVIES.
J. W. CRANE.
THEOD. GORDON.
W. NICHOLL.
A. T. THOMSON.
JOHN SIMS.
JAMES COPLAND.
GEORGE GREGORY.
J. C. SOMERVILLE.

JAMES BARTLET.
JOHN WEBSTER.
T. H. BURDEN.
THOMAS DAVIES.
T. S. SMITH.
DAVID BARRY.
CHARLES HOLLAND.
JOHN FOLEY.
FRANCIS BOOT.
R. M. KERRISON.
C. J. ROBERTS.
WILLIAM STROUD.
JAMES JOHNSON.
EDWARD RIGBY.
R. RICHARDSON.
G. G. SIGMOND.
JAMES HOPE.
A. T. HOLROYD.

VINDICIÆ MEDICÆ.

I. That the Charter of the Royal College of Physicians of London was granted by Henry the Eighth, for the advancement of medical science and for the protection of the Public “against the temerity of wicked men, and the practice of the ignorant.”

ANSWER.—This first paragraph of the petition involves a subtle inference which makes no part of the Charter. The Charter was granted for the purpose of preventing incompetent persons from practising physic. It expresses no other purpose whatever. When laws are the

subject of comment or discussion, the words in which they are expressed should alone be employed.

Linacre was chosen a fellow of All Souls in 1484, and irresistibly impelled by his love of learning, he soon afterwards hastened to Italy where Greek and Roman literature were then reviving, and where the kindness of Lorenzo de Medicis afforded him every facility for acquiring the knowledge which he sought. On his return, devoting himself to philosophy and physic, he was selected by Henry the Seventh to direct the studies and watch over the health of prince Arthur, and was successively appointed physician to that monarch and to Henry the Eighth and the princess Mary. Wolsey was the friend of Linacre, and through the influence of the cardinal, Linacre obtained the Charter; the reasons which determined the grant being stated in the Charter itself.

THE CHARTER.

“ Henricus Dei Gratia Rex Angliæ & Franciæ & Dominus Hiberniæ, omnibus ad quos præsentēs literæ pervenerint salutem. Cum regii officii nostri munus arbitremur ditionis

nostræ hominum fælicitati omni ratione consulere ; id autem vel imprimis fore, si improborum conatibus tempestive occuramus, apprime necessarium duximus improborum quoque hominum, qui medicinam magis avaritiæ suæ causa, quam ullius bonæ conscientiæ fiducia, profitebuntur, unde rudi & credulæ plebi plurima incommoda oriantur, audaciam compescere : Itaque partim bene institutarum civitatum in Italia, & aliis multis nationibus, exemplum imitati, partim gravium virorum doctorum Joannis Chambre, Thomæ Linacre, Ferdinandi de Victoria, Medicorum nostrorum, Nicholai Halsewel, Joannis Francisci & Rob. Yaxley, medicorum, ac præcipue reverendissimi in Christo patris, ac domini, dom Thomæ tituli Sanctæ Cecilæ trans Tiberim sacrosanctæ Romanæ ecclesiæ presbyteri cardinalis, Eboracensis archiepiscopi & regni nostri Angliæ cancellarii clarissimi, precibus inclinati, collegium perpetuum doctorum & gravium virorum, qui medicinam in urbe nostra Londino & suburbis, intraque septem millia passuum ab ea urbe quaqua versus publice exerceant, institui volumus atque imperamus. Quibus tum sui honoris, tum publicæ utilitatis nomine ; curæ (ut speramus) erit, malitiosorum

quorum meminimus inscientiam temeritatemque, tam suo exemplo gravitateque, suis deterere, quam per leges nostras nuper editas, ac per constitutiones per idem collegium condendas, punire. Quæ quo facilius rite peragi possint, memoratis doctoribus Joan Chambre, Thomæ Linacre, Ferdinando de Victoria, medicis nostris, Nicholao Halsewel, Joanni Francisco, et Rob Yaxley, medicis, concessimus, quod ipsi, omnesque homines ejusdem facultatis de & in civitate prædicta, sint in re & nomine unum corpus et communitas perpetua sive collegium perpetuum; & quod eadem communitas sive collegium singulis annis in perpetuum eligere possint & facere, de communitate illa aliquem providum virum, & in facultate medicinæ expertum, in præidentem ejusdem collegii sive communitatis, ad supervidend' recognoscend' & gabernand' pro illo anno collegium sive communitatem præd' & omnes homines ejusdem facultatis & negotia eorundem. Et quod idem præsidens & collegium sive communitas habeant successionem perpetuam & commune sigillum negotiis dict' communitatis & præidentis in perpetuum serviturum. Et quod ipsi & successores sui in perpetuum sint personæ habiles

& capaces ad perquirendum & possidendum in feodo & perpetuitate terras & tenementa, reditus, & alias possessiones quascunque.

“ Concessimus etiam eis & successoribus suis pro nobis & hæredibus nostris, quod ipsi et successores sui possint perquirere sibi & successoribus suis, tam in dicta urbe quam extra, terras et tenementa quæcunque annum valorem duodecim librarum non excedent’, Statuto de Alienatione ad manum mortuam non obstante. Et quod ipsi per nomina præsentis & collegii seu communitatis facultatis medicinæ Lond’ placitari & implaciteri possint coram quibuscunque iudicibus in curiis et actionibus quibuscunque. Et quod præd’ præsidens et collegium sive communitas, et eorum successores, congregationes licitas & honestas de seipsis, ac stat’ & ordinationes pro salubri gubernatione, supervisu et correctione collegii seu communitatis præd’ & omnium hominum eandem facultatem in dicta civitate, seu per septem milliaria in circuitu ejusdem civitatis exercend’ secundum necessitatis exigentiam, quoties et quanda opus fuerit, facere valeant licite et impune, sine impedimento nostr’ hæredum, vel successorum nostrorum, justiciariorum, eschaetorum, vicecomitum,

& alior' balivor' vel ministror' nostror' hæred' vel successor' nostror' quorumcunque. Concessimus etiam eisdem præsidenti & collegio, seu communitati, et successoribus suis, quod nemo in dicta civitate aut per septem miliaria in circuitu ejusdem, exerceat dictam facultatem nisi ad hoc per dict' præsidentem & communitatem, seu successores eorum, qui pro tempore fuerint, admissus sit per ejusdem præsidentis & collegii literas sigillo suo communi sigillatas, sub pœna centum solidorum pro quolibet mense, quo non admissus eandem facultatem exercuit, dimidium inde nobis & hæred' nostris, & dimidium dicto præsidenti & collegio applicand'.

“ Præterea volumus & concedimus pro nobis et successoribus nostris (quantum in nobis est) quod per præsidentem & collegium præd' communitatis pro tempore existen' & eorum successores in perpetuum, quatuor singulis annis eligantur, qui habeant supervisum & scrutinium, correctionem & gubernat' omnium & singulor' dictæ civitatis medicorum utentium facultate medicinæ in eadem civitate, ac aliorum medicorum forinsecorum quorumcunque facultatem illam medicinæ aliquo modo frequentantium & utentium infra eandem civitatem & suburbia

ejusdem, sive intra septem miliaria in circuitu ejusd' civitatis, ac punitionem eorund' pro delictis suis in non bene exequendo faciendo, & utendo illa; nec non supervisum & scrutinium omnimodarum medicinarum & earum reception' per dictos medicos, seu aliquem eorum, hujusmodi ligeis nostris pro eorum infirmitatibus curandis & sanandis, dandis, imponendis, & utendis, quoties et quando opus fuerit pro commodo & utilitate eorundem ligeorum nostrorum; ita quod punitio hujusmodi medicorum utentium dicta facultate medicinæ, sic in præmissis delinquent' per fines, amerciamenta, & imprisonment corpor' suor' & per alias vias rationab' & congruas exequatur.

“ Volumus etiam & concedimus pro nobis, hæredibus et successoribus nostris, (quantum in nobis est,) quod non præsidens, nec aliquis de collegio præd' medicorum, nec successores sui, nec eorum aliquis exercens facultatem illam, quoquo modo in futur' infra civitatem nostram præd' et suburbia ejusdem, seu alibi, summonentur aut ponantur neque eorum aliquis summonedur aut ponatur in aliquibus assisis, juratis, inquestis, inquisitionibus, attinctis, & aliis

recognitionibus infra dictam civitatem & suburbia ejusdem, imposterum coram majore ac vicecom' seu coronatoribus dictæ civitatis nostræ pro tempore existend' capiendis aut per aliquem officarium seu ministrum suum, vel officarios sive ministros suos summonend', licet iidem jurati, inquisitiones, seu recognitiones summon' fuerint super brevi vel brevibus nostris, vel hæredum nostrorum, de recto; sed quod dicti magistrati, sive gubernatores, ac communitas facultatis antidictæ & successores sui, & eorum quilibet dictam facultatem exercentes versus nos, hæredes, et successores nostros, ac versus majorem et vicecomites civitatis nostræ præd' pro tempore existen' & quoscunque officarios et ministros suos sint inde quieti, & penitus exonorati in perpetuum per præsentis.

“ Proviso quod litteræ nostræ, seu aliquid in eis content' non cedent in præjudicium civitatis nostræ Lond' seu libert' ejusd' & hoc absque fine seu feodo pro præmissis, seu sigillat' præsentium nobis facienda, solvenda, vel aliququaliter reddenda, aliquo statuto, ordinatione, vel actu in contrarium ante hoc tempora facto, edito, ordinato, seu proviso in aliquo non obstante. In

cujus rei testimonium has litteras nostras fieri fecimus patentes. Teste meipso apud Westmonasterium xxij. die Sept' an' reg' nostri x."

THE ACT OF 14th AND 15th HEN. VIII.

CONFIRMING THE CHARTER.

" And forasmuch that the making of the said Corporation is meritorious, and very good for the Common Wealth of this your Realm, it is therefore expedient and necessary to provide, That no Person of the said Politick Body and Commonalty aforesaid, be suffered to exercise and practise Physick, but only those Persons that be profound, sad, and discreet, groundly learned, and deeply studied in Physick.

" In consideration whereof, and for the further authorising of the same Letters Patent, and also enlarging of further Articles for the said Common Wealth to be had and made:" Pleaseth it your Highness, with the assent of your Lords Spiritual and Temporal, and the Commons, in the present Parliament assembled, to enact, ordain, and establish, That the said Corporation of the said Commonalty and Fellowship of the Faculty of Physick aforesaid,

and all and every Grant, Article, and other Thing, contained and specified in the said Letters Patent, be approved, granted, ratified, and confirmed in the present Parliament, and clearly authorized and admitted by the same, good, lawful, and available to your said Body Corporate, and their Successors for ever, in as ample and large manner as may be taken, thought, and construed by the same; and that it please your Highness, with the assent of your said Lords Spiritual and Temporal and the Commons in this your present Parliament assembled, further to enact, ordain, and establish, That the Six Persons beforesaid in your said most gracious Letters Patent named as Principals, and first named of the said Commonalty and Fellowship, choosing to them Two more of the said Commonalty, from henceforward to be called and cleaped *Elects*; and that the same Elects yearly choose One of them to be President of the said Commonalty, and as oft as any of the Rooms and Places of the same Elects shall fortune to be void, by Death or otherwise, then the Survivors of the said Elects (within Thirty or Forty Days next after the Death of them or any of them) shall

choose, name and admit One or mo, as need shall require, of the most cunning and expert Men, of and in the said Faculty in *London*, to supply the said Room and Number of Eight Persons; so that he or they that shall be chosen, be first by the said Survivors strictly examined after a Form devised by the said Elects, and also by the same Survivors approved.

And where that in Dioceses in *England*, out of *London*, it is not light to find alway Men able sufficiently to examine (after the Statute) such as shall be admitted to exercise Physick in them, that it may be enacted in this present Parliament, That no Person from henceforth be suffered to exercise or practise in Physick through *England*, until such time as he be examined at *London*, by the said President, and three of the said Elects; and to have from the said President or Elects, Letters Testimonials of their approving and Examination, except he be a Graduate of *Oxford* or *Cambridge*, which hath accomplished all things for his Form, without any Grace.

II. That six Physicians were named in the Charter, who, together with all men of the same faculty then resident in London, were constituted one body, commonalty, or perpetual College.

ANSWER.—An exact acquaintance with the state of the profession before, and when the Charter was granted, would contribute much to a right understanding of all its objects, and of all its provisions.

In the 9th of Henry V. a petition was presented to parliament, praying that no man may practise physic in England under certain pains and penalties, except he have long studied in the schools of physic, and have taken a degree at one of the Universities, and that all Physicians who had not graduated, be required to repair on a certain day to one of the Universities of the land, to be examined for their degrees. Of this petition the following is the preamble.

“ Hey and most mighty prince noble and worthy lords spirituelx and temporelx and wor-

shipfull comunes, for so moche as a man hath thre things to governe, that is to say soule, body, and worldly goods, the which ought and shulde ben principaly reweledby thre sciences, that ben divinitie, fysyk, and lawe, the soule by divinitie, the body by fysyk, worldly goods by lawe, and those conynges should be used and practised principally by the most connyng men in the same sciences, and most approved in cases necessities to encrease of virtue, long life, and gouds of fortune, to the worship of God and comyn profit.

“ But worthi soveraines hit is known to your hey discretion, meny uncunning and unaproved in the aforesaide science practiseth, and specialy in fysyk, so that in this realme is every man be he never so lewd taking upon him practice y suffered to use it to grete harm and slaughtre of many men, where if no man practised therein but al only connynge men and approved sufficiently y learned in art, filosofye, and fysyk, as it is kept in other londes and roialmes ther shuld many man that dyeth for defaute of helpè lyve, and no man perish by unconning.”

The statute of 3 Hen. VIII. c. 11, by which

it was enacted, "That no person within the city of London, nor within seven miles of the same, take upon him to exercise and occupy as a Physician or Surgeon, except he be first examined, approved, and admitted by the Bishop of London, or by the Dean of Paul's for the time being, calling to him or them four doctors of physick, and for surgery other expert persons in that faculty," and by which it was further enacted, "that no person out of the said city and precinct of seven miles of the same, except he have been (as is aforesaid) approved in the same, take upon himself to exercise and occupy as a physician or surgeon in any diocese within this realm, but if he be first examined and approved by the bishop of the same diocese, or, he being out of the diocese, by his vicar-general, either of them calling to them such expert persons in the said faculties as their discretion shall think convenient," affirms in its preamble that "the science and cunning of physick and surgery (to the perfect knowledge whereof be requisite great learning and ripe experience) is daily within this realm exercised by a great multitude of ignorant persons," &c.

That "many uncunning and unapproved," with "a multitude of ignorant persons," "*hominum improborum et malitiosorum quorum meminimus inscientiam et temeritatem*," were then engaged in the practice of physic, is abundantly manifest. To correct this evil the charter was granted. The "uncunning and unapproved," "the ignorant," the "*improbi et malitiosi*," were persons whom it could not be intended to incorporate. They were to be restrained, coerced, and punished. A chosen body "*doctorum et gravium virorum*," were appointed to govern, and to their regulations, if consistent with right and reason, the rest of the faculty were required to submit. Whenever the charter directs any act of regulation to be done, the direction is addressed exclusively, "*Præsidenti et Collegio vel Communitati præd*," as the governing power. Whenever the charter expresses its jurisdiction or designates the persons to be governed, or the parties to obey, the words "*et omnes homines ejusdem facultatis*" are uniformly added. And as Sir Edward Coke, whose authority is universally permitted to have all the force and efficacy of law, observes, 1 Inst. B. 3, c. 13, § 728,

that "it is the most natural and genuine exposition of a statute to construe part of the statute by another part of the same statute, for that best expresseth the meaning of the makers." "Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum. Injustum est nisi totâ lege inspectâ, de unâ aliquâ ejus particulâ judicare vel respondere," it was a wise and prudent decision of Mr. Justice Yates, when he said, in *Rex v. Askew*, "I am far from thinking that all the men of and in London then practising physic were incorporated by the charter. The immediate grantees under the charter were the six persons particularly named in it. The rest were to be admitted by them. They were not *ipso facto* made members."

III. That the perpetuity of the College was to be kept up by the future admission of all men of the same faculty into the College.

ANSWER. — Mr. Justice Yates, in *Rex v. Askew*, referring to what has just been stated, answers this allegation in the following words: “Much less are future Practisers of Physic of and in London incorporated by this Charter.” And in *Stanger v. The President and College of Physicians*, the concurrent testimony of the Lord Chief Justice Kenyon, and of all the Judges on the Bench, confirmed the judgment of Mr. Justice Yates. For Sir Edward Coke says, (2nd Inst. 611.) “We never heard it excepted unto heretofore, that any statute should be expounded by any other than the Judges of the land; neither was there ever any so much overseen as to oppose himself against the practice of all ages to make that question, or to lay any such unjust imputation upon the Judges of the realm.”

That my Lord Mansfield concurred in opinion with Mr. Justice Yates is as clear, as that Mr. Justice Aston differed from both. For Mr. Justice Aston himself, when sitting by the side of Lord Mansfield, and expressing his opinion that the words of the Charter and of the Act of Parliament warranted another construction, distinctly said, that he was distrustful of his own judgment, because it was directly opposed to that of the Lord Chief Justice, and of Mr. Justice Yates. Mr. Justice Willes gave no opinion upon the assumed right of the Licentiates to be incorporated. So that it will be found in the sequel of this inquiry, that the great weight of judicial authority is decidedly against that assumption, at least in the proportion of six to one. As it would be uncandid to conceal or mutilate any opinion which fell from the Bench, particularly as the *dicta* of Lord Mansfield are frequently referred to, and the judgment of Mr. Justice Aston was not favourable to the present constitution of the College, it is better to state exactly what were the opinions delivered by the Judges in *Rex v. Askew* (Burr. 2195); but it is necessary to remember that the constitution of the College

when Lord Mansfield spoke, is not the constitution of the present day.

On Friday the 20th of November 1767, Sir Fletcher Norton moved for a rule upon Dr. Askew and others, (the four then censors,) for them to shew cause why an information in nature of a *quo warranto* should not be granted against them, to shew by what authority they acted as censors of the College of Physicians.

The objection was, That whereas the election ought to be by the whole body, these gentlemen had been elected only by a select body ; namely, by the fellows, exclusive of the Licentiates ; though the Licentiates demanded admittance ; which was refused to them by the fellows, on pretence of their having no business there, upon that occasion.

It was argued on Thursday 21st April 1768, by Sir Fletcher Norton and Mr. Morton, for the Licentiates ; and on Monday 25th April 1768, by Mr. Yorke, (then Attorney General,) Mr. Dunning, (then Solicitor General,) Serjeant Davy, Mr. Ashhurst, and Mr. Wallace for the College ; and Mr. Wedderburn for the Licentiates. On Wednesday the 27th, Serjeant Glynn, Mr. Walker, and Mr. Mansfield, proceeded, on

behalf of the Licentiates : and on the same day, the Court gave their opinion.

Lord Mansfield took notice, that the figure and consequence of the contending parties, and the respect due to them ; the anxiety that has appeared in the contest ; and perhaps the spirit which has been raised on both sides, in the course of it ; have carried the counsel concerned into a very great length of argument, and into the discussion of a variety of matter foreign to the point directly in question before the Court upon the present motion.

The question properly now before us is singly this—"Whether the persons applying for this information are fellows, and intitled to vote in the election of censors." If they are, the election of these censors, being made in exclusion of their votes is not good : if they are not fellows, and have no right to vote in the election of censors, then this election stands unimpeached.

I consider the words "*socii, communitas, collegium, societas, collega, and fellows,*" as synonymous terms ; and every *socius* or *collega*, as a member of the society or corporation or college. The question is, "Whether these Licentiates are *socii* or *collegæ* or fellows."

The facts are not disputed : and there is no

doubt about the law, as far as relates to the question now before us.

Here is a charter of incorporation. And it has been admitted on both sides, that there has been a great number of by-laws and long usages, which are agreed to appear upon their books and the extracts from them : and the permission of these licentiates “to practise” is not disputed.

But I doubt whether this permission to practice, and these letters testimonial can amount to an admission into the fellowship of the Corporation or College.

Nothing can make a man a fellow of the College, without the Act of the College. The first act to be done by them is their judging of the qualifications of the candidate. The admission into the fellowship is an act subsequent to that. The main end of the incorporation was to keep up the succession : and it was to be kept up by the admission of fellows after examination. The power of examining and admitting after examination, was not an arbitrary power ; but a power coupled with a trust : they are bound to admit every person whom upon examination they think to be fit

to be admitted, within the description of the charter and the act of Parliament which confirms it. The person who comes within that description has a right to be admitted into the fellowship: he has a claim to several exemptions, privileges, and advantages attendant upon admission into the fellowship. And not only the candidate himself, if found fit, has a personal right; but the public has also a right to his service; and that, not only as a physician, but as a censor, as an elect, as an officer in the offices to which he will upon admission become eligible. In Dr. Letch's case, the reasons for his rejection being called for, the answer was, "that they judged him to be unfit:" and as the legislature have vested the judgment in the "*comitia majora*;" and there was no pretence or ground to pretend that they had acted corruptly, arbitrarily or capriciously; that answer was esteemed a sufficient one. And they have power, not only by their charter, but by the law of the land, to make fit and reasonable by-laws; subject to certain qualifications.

It appears from the charter and the act of Parliament, that the charter had an idea of persons who might practice physic in London,

and yet not be fellows of the College. The president was to overlook not only the College, but also "*omnes homines ejusdem facultatis.*" So then, when the College or Corporation were to make by-laws, these by-laws were to relate not only to the fellows, but to all others practising physic within London or seven miles of it. The restraint from practising physic is thus expressed—"Nisi ad hoc admissus sit by letters testimonial under their common seal." Now, what does this "ad hoc" mean? It must mean "ad exercendum facultatem medicinæ," admissus sit. And this is agreeable to the words used in 3 H. VIII. c. 11. concerning admissions by the Bishop of London and Dean of St. Paul's. The supervisal of the censors is expressed to include not only the physicians of London, but *omnes etiam qui per septem milliaria in circuitu ejusdem medicinam exercent.* The same observation holds as to punishments. This must regard those who had a right to practise in London and within seven miles of it, and were not fellows of the College. These observations convince me that the charter had an idea "that some persons might practise by licence under their seal, who were not fellows of the College." Then let us see how the usage was.

In 1555 they must have had a probationary license, before admission into the College. Afterwards, it was to be a probation for four years before admission. The College might grant such probationary licenses, with some reason, and agreeably to their institution. This shows that some licenses were granted to persons not Fellows of the College. The 3rd Hen. VIII. c. 11. takes away all former privileges; and says that no person within London, or seven miles of it, shall exercise as a Physician, except he be first examined, approved, and admitted by the Bishop of London or by the Dean of St. Paul's, calling to them four Doctors of physic: and the Charter and Statute confirming it have left every thing at large to the College, no way confined or restrained but by the fitness of the objects. In 1561, a partial license was granted to an oculist: a person may be fit to practise in one branch, who is not fit to practise in another. Licenses have also been granted to women: and that may not be unreasonable in particular cases; as for instance, such as Mrs. Stevens's medicine for the stone. Partial licenses have been given for above 200 years. Of late years, indeed, general licenses have been usual; and the persons applying for them have been

examined, though not meant to be members of the Corporation or College. In 1581, notice is taken of three classes; Fellows, Candidates, and Licentiates: and from that time they have given licenses to practice. The licenses probably took their rise from that illegal by-law, (now at an end,) which restrained the number of Fellows to twenty. This was arbitrary and unjustifiable: they were obliged to admit all such as came within the terms of their Charter. Yet it is probable that the practice of licensing was in consequence of their having made it. However, for above a hundred years, there has been a known distinction between Fellows and Licentiates; it is as well known as the distinction between Graduates and Under-Graduates in the Universities.

This being premised, let us inquire “Who these gentlemen are, that are now applying to the Court?”

They are persons who set up a title directly contrary to the sense in which their license is given to them, and received by them. They cannot avail themselves of their instrument, in this way; it would be a cheat upon the College. And they have acquiesced many years under

this license given them by the College, as merely a license to practise.

But even supposing them to have a right to be Fellows ; yet, as it is clear that the license does not make them *ipso facto* Fellows, they could not vote in the election of Censors before their admission to the fellowship. And therefore the exclusion of their votes cannot impeach this election.

I am of opinion “ that this rule ought to be discharged.”

If my brothers should concur with me, the College, as now constituted, is at present to be considered as the Body Corporate. I have a great respect for this learned Body ; and if they should think proper to hearken to my advice, I would wish them to consider whether this may not be a proper opportunity for them to review their Statutes. And I would recommend it to them to take the best advice in doing it, and to attend to the design and intention of the Crown and Parliament in their institution. I see a source of great dispute and litigation in them as they now stand ; there has not, as it should seem, been due consideration had of the Charter, or legal advice taken in forming them.

The statute of 14 and 15 Hen. VIII. c. 5. after reciting the Charter, mentions it to be expedient and necessary to provide "that no person of the said Politic Body and Commonalty aforesaid, be suffered to exercise and practise physic, but only those persons that be profound, sad, and discreet, groundedly learned, and deeply studied in physic."

I do not say, that no man can be a Licentiate, who is not perfectly and completely qualified to be a Fellow of the College. Many persons of no great skill or eminence have been licensed; and there seem to be fewer checks, guards, and restrictions upon granting licenses, than upon the choice of Fellows. Yet it has been said, "that there are many amongst the Licentiates who would do honour to the College or any society of which they should be members, by their skill and learning, as well as other valuable and amiable qualities; and that the College themselves, as well as every body else, are sensible that this is in fact true and undeniable." If this be so, how can any by-laws which exclude the possibility of admitting such persons into the College, stand with the trust reposed in them, "of admitting all that are

fit." If their by-laws interfere with their exercising their own judgment, or prevent them from receiving into their body persons known or thought by them to be really fit and qualified; such by-laws require regulation. Such of them, indeed, as only require a proper education, and a sufficient degree of skill and qualification, may be still retained: there can be no objection to cautions of this sort; and the rather, if it be true "that there are some amongst the Licentiates unfit to be received into any society." It is a breach of trust in the College to license persons altogether unfit.

I do not choose to speak more particularly, but I recommend it to those who are now likely to be established the Masters of the College, to take good advice upon the points I have been hinting to them.

Mr. Justice YATES observed, that upon this application of the Licentiates, grounded upon their not being admitted to vote, it was incumbent upon them to show "that they had a right to vote."

They claim to be members of the Corporation, equally with the Fellows of the College;

they insist, "that the Charter has made them so." And it has been said, "that there is no other way of continuing the Corporation;" and "that no by-laws or usage can contravene the express words of the Charter."

But I am far from thinking that all the men of and in London, then practising physic, were incorporated by the Charter. The immediate Grantees under the Charter were the six persons particularly named in it; the rest were to be admitted by them. They were not *ipso facto* made members. They were first to give their consent, before they became members; they could not be incorporated without their consent.

Much less are future practisers of physic of and in London actually incorporated by this Charter.

If the inhabitants of a town are incorporated, yet every one must be admitted before he becomes a corporator. The Crown can't oblige a man to be a corporator, without his consent: he shall not be subjected to the inconveniences of it, without accepting it and assenting to it. Upon moving for an information in nature of *quo warranto* against a corporator, it is necessary to prove "that the corporator has accepted."

The council for the Licentiates insist, that their admission, by the letters testimonial, "to practise physic in London and within seven miles of it," is an admission into the College or Corporate body.

But this license "to practise physic in London and within seven miles of it," does by no means render the licentiate liable to all the burdens and inconveniences of being an actual member of the College.

A man is not capable of being admitted into the College, without being possessed of certain qualifications which are made requisite. But granting that he really is possessed of those requisite qualifications, yet his merely being qualified for becoming a member does not make him one. The instrument which gives the license or permission "to practise," does not mention any such thing as an admission to be a member of the College. The word "admissus," is only used, in this instrument, as a more classicle term than "permissus;" it don't import an actual admission into the College. The charter and the act of Parliament confirming it make a distinction between the College or Corporation, and other men of the same faculty: "to govern the said fellowship and commonalty,

and all men of the said faculty ;” and again, “*collegium sive communitatem prædict’ et omnes homines ejusdem facultatis.*”

A good deal has been said about long usage. But usage only applies, where the construction is doubtful. Here, the construction is not doubtful. If it were, then indeed usage for 200 years might have weight. But that is not the present case.

The taking money of the Licentiates has been urged as an argument on their side. But taking their money does not prove them to be members of the College. If it has been wrongfully taken from them, they may recover it back again. It has been called a taxing them to be contributory to the corporate charges and expences : and such a tax, it has been said, can’t be levied upon strangers. From whence it has been inferred, that the College did not consider them as strangers, but as fellows. But this can’t amount to a proof of their having been admitted into the College ; even though it should be granted to afford them a claim to admittance : it could not give them a right to vote, as being members of the corporation, at the election of censors. The present application is not for a mandamus

to admit them ; but is grounded upon the denial of their right to vote, as being members : it supposes them to have been already admitted.

I am clearly of opinion, that the gentlemen now applying for this information are not members of the College.

Mr. Justice ASTRON agreed, that the restraining the number of fellows to twenty was illegal : and he thought that the distinction between Fellows and Licentiates had taken its rise from the restriction of the number of Fellows.

He agreed also, that no person can be obliged to be a member of a corporation without his consent : and he allowed, that the charter included only such persons as accepted and assented to it.

But, after expressing a very high opinion of Lord Mansfield's abilities and Mr. Justice Yates's, and a modest diffidence of his own, he acknowledged that his sentiments upon the construction of the charter connected with the act of Parliament, and the right of admission into the College, differed from theirs : and he thought that in grants of this kind, the construction ought to be made in a liberal manner ; and this

grant includes “omnes homines ejusdem facultatis de et in civitate prædictâ ;” and the application to Parliament for the act of 14 and 15 Hen. VIII. c. 5. (intituled “The Privileges and Authority of Physicians in London,”) to confirm the charter, is made by the six persons particularly named in it, “and all other men of the same faculty within the city of London and seven miles about.” All the acts of Parliament made in *pari materia* should be taken, he said, together: and the construction has been uniform, till the time of queen Mary. Till then, there was no distinction of major and minor, amongst these physicians. It seemed to him that the idea was, “that all persons duly qualified, who took testimonials under the College-seal, were to be of the community.” And this was sufficient to continue the succession, and perpetuate it.

He should however give no opinion, he said, how it might turn out upon a mandamus.

As to the motion now depending—He proceeded and concluded thus—But upon the foot of the present application for an information in nature of a *quo warranto* against the censors, to shew by what authority they exercise their office,

only because they have been elected without their intervention, who have never been admitted into the corporation, (whatever claim they may have to demand such admission,) I am clearly of opinion that they have laid no sufficient ground to support it ; and therefore that this rule ought to be discharged.

Mr. Justice WILLES confined himself to the point directly and immediately in question before the Court.

These Gentlemen, the Licentiates, can have no pretence, under the circumstances in which they now stand, to object to the election of the censors, for want of the admission of their votes. For, whatever right they may claim, or whatever right they may really have, to their admission into the fellowship of the College or Corporation ; yet as they never have been admitted into it, no mere right of admission (be it ever so clear and indisputable) can give them a right to vote in corporate-elections, before they shall have been admitted into the corporation.

Therefore they cannot, before their admission, maintain this rule.

Lord MANSFIELD.—I rest my opinion upon this ground ; “ that their present application to the Court is under an instrument which shows that they are not now fellows of the College, nor admitted into the Corporation.”

I think that every person of proper education, requisite learning and skill, and possessed of all other due qualifications, is intitled to have a licence : and I think that he ought, if he desires it, to be admitted into the College. But I can not lay it down, “ that every man who has a licence from the College, by letters testimonial, to practise physic in London and within seven miles of it, does thereby actually become a member of the College, and obtain a right to vote in corporate elections.”

The distinction between Fellows and Licentiates has been established above a hundred years : and these gentlemen have accepted an instrument which was not understood, by either side, to convey a right to be ipso facto Fellows ; and it is plain, that they never have been actually admitted Fellows. And I am clear, that they can have no claim to vote, before admission.

The Chief Justice and Mr. Justice Yates both

declared, that they gave *no* opinion as to what would be the result of an application for a mandamus to admit.

The following is my Lord Kenyon's judgment in

STANGER *v.* PRESIDENT AND COLLEGE OF
PHYSICIANS.—(7 Term Rep.)

LORD KENYON, Ch. J. If in deciding this question it were necessary for us to answer all the arguments that have been urged at the bar, I should have desired further time to consider of the subject; but as the grounds on which I am warranted to determine the case lie in a very narrow compass, and I have formed my opinion upon it, I wish to put the question at rest now. By what fatality it has happened that almost ever since this charter was granted this learned body have been in a state of litigation I know not; and I cannot but lament that the learned Judges in deciding the cases reported in *Burrow* did not confine themselves to the points immediately before them, and dropped hints that perhaps have invited litigation; though indeed I cannot see what these parties are con-

tending for that is worth the expense and anxiety attending this litigation. The public already have the benefit of the assistance of the licentiates; and their emoluments, the fair fruits of their education and advice, are just the same as those that the fellows of the college receive. We have however been pressed with the authority of those who have preceded us here: no person can have a greater veneration for those characters than I have, and if this point had been decided by them, I should have thought myself bound by their decision. But the cases are unlike. The principal ground on which it was said in 4 *Burr.* 2199, that the bye-laws of the college were bad was, that “they interfered with their exercising their own judgment, and prevented them from receiving into their body persons known or thought by them to be really fit and qualified;” and if I had found that objection existed in this case, I should have thought it fatal: but in the very sentence in which Lord *Mansfield* expressed himself as above, he added “such of them indeed as only require a proper education and a sufficient degree of skill and qualification may be still retained.” Two universities have been founded in this country, amply endowed and

furnished with professors in the different sciences ; and I should be sorry that those who have been educated at either of them should undervalue the benefits of such an education.

In this case it is admitted that a licentiate does not *de facto* become a fellow of the college ; it is admitted that he must be first examined, and that those who are called the College of Physicians are to judge of his fitness. It seems that the appeal here is rather made *ad verecundiam*, and that Dr. *Stanger* could not be rejected if he were examined. If the college are not judges of the fitness of the person examined, I do not know who is. Then is this a reasonable test of the fitness of the party ? possibly they might have framed a better, though I do not say that they could ; but the question here is whether this is a reasonable bye-law ? According to the concurrent opinions of all mankind it is. The Legislature have considered that persons who have taken their degrees in our universities are entitled to certain privileges in the church. So if we look into our own profession, those who have been educated at our universities have particular privileges ; and though the inns of court are not corporations, yet their regulations shew that this has been

considered as reasonable. It is not that a person becomes qualified from keeping his commons within the walls of the inns of court or the universities, but living with those of the profession will probably advance him in the knowledge of that profession for which he is a candidate. Again in the civil law; however competent any particular individual may be from extraordinary endowments or the exertion of superior talents, he must first take his degrees at one of our universities, and afterwards continue a year in a state of probation before he can practise. Those regulations that are adapted to the common race of men are the best: it does not follow that all institutions calculated for the ordinary classes are to be prostrated merely because they stand in the way of some few individuals of superior talents. Then the question is, whether this is a reasonable bye-law that requires a degree to be taken at one of our universities, which in general is supposed to be conferred as a reward for talents and learning. If indeed this had been a *sine qua non*, and it had operated as a total exclusion of every other mode of gaining access to the college, it would have been a bad bye-law: but

these bye-laws point out other modes of gaining admission into the college. If Dr. *Stanger* has all those requisites that qualify a person for that high station, any one of the fellows may now propose him; he may apply to the honourable feelings of the college, to the very same tribunal to which this mandamus (if it were granted) would refer him; for in all events he must submit to their examination and determination. In the profession of the church, we find that the bishops insist on having a testimonial of the person to be ordained signed by a certain number of clergymen; and though the bishops themselves may have the power of judging of the fitness of the person to be ordained it was never doubted but that this was one reasonable test of fitness, even before examination: it is a test to regulate their own conduct. So here I think this is a reasonable test. Therefore on this short ground, without entering into any of the other topics that have been argued, I am of opinion that these are good and reasonable bye-laws, and that we are bound to refuse the writ.

IV. That several of the six Physicians named in the Charter, studied at, and possessed degrees from, foreign Universities; and that no distinction is mentioned, as regards the University, where a Physician may have obtained his degree.

ANSWER.—When the Charter was granted, learning and science were more successfully cultivated abroad, and especially in Italy, than in this kingdom. It was therefore the practice at that time to resort to foreign universities for the purpose of acquiring a higher education than England could then offer, and degrees in physic were often taken in Italy. But it was also the usage for those who possessed foreign degrees in physic, to be incorporated either at Oxford or Cambridge, as is proved by the incorporation of the King's Physicians named in the Charter.

John Chambre, who had been a Fellow of Merton College, in Oxford, after taking his degree of Master of Arts, travelled into Italy in

1502, and having studied physic at Padua, took the degree of Doctor of Physic there. On his return he was appointed Physician to the King, was incorporated as Doctor of Physic at Oxford, on the 29th October, 1531, became a Canon of Windsor and Dean of Westminster, and was presented to other valuable preferments in the church.

Wood's Fasti Oxonienses.

Thomas Lynacre, chosen a Fellow of All Souls College in Oxford, in 1484, was after his return from Italy, incorporated Doctor of Physic in that University, and having been admitted into Holy Orders, was made Chantor of the Church of York, and presented to other dignities in the Church.

Wood's Athenæ Oxonienses.

Fernandus or Ferdinandus de Victoria, Doctor of Physic (beyond the seas), Physician to King Henry VIII., and the Queen Consort, was incorporated Doctor of Physic in the University of Oxford in October, 1520.

Wood's Fasti Oxonienses.

The College possesses no record of these degrees, nor of the Universities at which the degrees of the other Physicians named in the charter were conferred: but Dr. Francis, or Franciscus, was the physician of Cardinal Wolsey, and after the death of Linacre, he became the professional adviser of Erasmus. There are four letters of that very eminent scholar extant, addressed to Dr. Francis as the Cardinal's physician; and as Wolsey was the founder of Christ Church, and regarded as the distinguished patron of our seats of learning, (which is proved by the extraordinary fact, that both the English Universities absolutely transferred to the Cardinal all the rights and privileges they possessed, resigned their charters to him, and submitted themselves unconditionally to his sole dominion,) it may be presumed that Francis, if he had taken a degree abroad, would at least have been incorporated here as a compliment to his proud protector.

The College believes that Nicholas Halsewell and Robert Yaxley were also English Graduates; but the imperfect state of the Registers at that period prevents the College from proving it by

their authority. That such is the condition of the Registry of the beginning of the sixteenth century, is distinctly shown by the testimony of Wood, who says that in 1508, "Richard Bartlet, Fellow of All Souls, (whom Dr. John Cay mentions as very famous for his learning, great knowledge and experience in physic,) supplicated that he might be licensed to proceed in physic, but whether he was admitted or did really proceed or stood in the Act, it doth not by the neglect of the Registry appear in the Register of this or of any year following." And again speaking of Graduates in Arts in 1503, Wood says there were about twenty that year, but that "we have no register that shows it, only certain imperfect and broken scripts containing sums of money received for the taking of degrees, which I have seen, but I think are now perished."

V. That all Physicians entitled to practise in London, are equally entitled, under the Charter, to admission to the Fellowship of the College.

ANSWER.—My Lord Mansfield was of a different opinion, and in *Rex v. Askew*, Mr. Justice Yates said, “A man is not capable of being admitted into the College without being possessed of certain qualifications which are made requisite. But granting that he is really possessed of these requisite qualifications, yet his merely being qualified for becoming a member does not make him one. The instrument which gives the licence or permission to practise, does not mention any such thing as an admission to be a member of the College. The word ‘admissus’ is only used in this instrument as a more classical term than *permissus*; it does not import an actual admission into the College. The Charter and the Act of Parliament confirming it, make a distinction between the College or Corporation and other men of the same faculty, ‘*Collegium sive Communitatem prædict’ et omnes homines ejusdem facultatis.*’ ‘To govern the said

Fellowship and Commonalty *and all men of the same faculty.*' A good deal has been said about usage, but usage only applies where the construction is doubtful. Here the construction is not doubtful."

VI. Your Petitioners are prepared to show, that bye-laws have been framed, and long acted upon by the College, which are directly opposed to and in violation of the letter and meaning of the said Charter.

ANSWER.—Were this the true character of the existing bye-laws, it would have been utterly impossible for Lord Kenyon to have declared them to be "good and reasonable bye-laws." Had they been framed in opposition to, or in violation of the letter and meaning of the Charter, it would have been impossible for Mr. Justice Lawrence to have pronounced the following judgment.

STANGER v. PRESIDENT AND COLLEGE OF
PHYSICIANS.—(7 Term Rep.)

LAWRENCE, J. “This is an application for a mandamus to compel the College of Physicians to examine Dr. *Stanger* in order that he may be admitted a fellow; and the foundation of the application is, that he has been admitted to the practice of physic and is one of the *homines ejusdem facultatis* within the meaning of the Charter; which (it is said) gives him a right to admission, if on examination he shall be found fit; and that all the bye-laws militating against such right are illegal. His counsel have been under the necessity of insisting on the license giving him a right to examination; for if the being admitted a member of the body be matter of election, it is immaterial whether the bye-laws be good or bad. It seems to me that the insufficiency of the provisions of the statute 3 *Hen. VIII.* probably gave rise to this Charter; the object of which was to establish a better mode of determining who were proper persons to be licensed to practise physic, and to prevent the practice of ignorant empirics; and if so, it was not necessary that all men of the faculty

should be members of the body. All that was necessary was that it should be composed of a sufficient number of learned and discreet practisers of physic, who should have a power of continuing the succession in such persons as themselves, and that they should license proper persons and restrain unfit persons from the practice of it. If this were the object, is it natural to construe the Charter as giving a right to all men of the faculty to become members of this body, when the Charter speaks of men of the faculty in a sense contradistinguished from the members of the body; or to suppose that the Crown meant to incorporate all, when the Charter was made for the government of some, who, if all were incorporated, could not exist? It is admitted that there were two distinct classes under the Charter, and according to Dr. *Stanger's* construction, one class, that of the governed, would be extinguished. Another mode of construing the Charter in the argument was by considering the words *omnes homines ejusdem facultatis* to mean the individual members of the corporation: but if so, there would be no power given to make bye-laws to affect the licentiates; and the clause in the

charter that gives the exemption from serving on juries, speaks of the persons exercising the faculty as contradistinguished from the members of the college ; “ nec presidens nec aliquis de collegio prædicto medicorum, nec successores sui, nec eorum aliquis exercens facultatem illam.” Therefore it seems to me that the *homines ejusdem facultatis* are not the individual members of the college. Then it was said that there might be some persons who might not choose to become corporators, and that this would make a class to be governed : but this is improbable ; it is not to be supposed that, as the principal object of the charter was to incorporate those who were skilled in physic, and to prevent those from practising who were unfit, they to whom the charter was offered would refuse the advantages of this corporation, especially as the obvious means of constituting a body to consist of all would be to make it compulsory on the physicians to become members, as in the case with companies in some cities and corporate towns, of which persons carrying on certain trades are obliged to be free. But seeing that there is in some degree an uncertainty as to the words “ *homines ejusdem facultatis*,” the usage that has

prevailed ought to govern us in the construction of them, especially as the usage perfectly accords with the design of the incorporation. It is said indeed, that the usage is in favour of Dr. *Stanger's* claim : but that is not so ; for there is no proof that before these bye-laws were made any persons were admitted into the body as a matter of right, and we must therefore take it that they came in by election. If Dr. *Stanger* claim as a matter of right, it must be under the words of the charter ‘ *quod ipsi omnesque homines ejusdem facultatis, &c. :*’ but if this gave him a right, the college could not resist his claim, though he would not submit to examination. And if every *homo ejusdem facultatis* came within this description of claim, Dr. *Archer* would have had a right to be admitted. The charter does not say that all the men of the faculty, who on examination shall be found fit, shall be admitted ; if it has said any thing in their favour, it has given them the right as soon as they become men of the faculty ; it has directed no examination. Suppose by a charter all the weavers of a town were incorporated, they would all have a right to be admitted without any examination. If then all the men of the faculty within

the limited district have a right from being men of the faculty, they possess all the fitness that the charter requires. This seems to me to be only a contrivance to get out of Dr. *Archer's* case, and to set up a right on the ground of being a licentiate. In the course of the argument, it was said that only those were to be admitted who were "profound, sad, and discreet, groundedly learned and deeply studied in physic:" but if so, it destroys the argument arising from the words "*omnes homines ejusdem facultatis.*" An argument has also been drawn from the Statute 3 *Hen. VIII.*: and it has been said that the persons licensed by that act were the only persons who at the time of the charter were men of the faculty, and that they and the six persons named were meant to be incorporated. But the words of the charter do not extend to all those persons; they are confined to the "*homines de et in civitate prædictâ,*" that is, to all men of and in the city of *London* practising physic: but this does not extend to persons practising in other places. Now if that construction had been adopted, it would have excluded the greater part of those who have been members of the college practising physic

in *Oxford*, *Cambridge*, and other places beyond these limits, as not falling within the description of those persons of whom (according to the construction) the college is to consist.

“ Taking the whole of the charter and the usage this construction will reconcile all the difficulties ; the intention of the Crown was to incorporate the six persons named in the charter and all men practising physic at that time *de et in civitate prædicta* ; and all those persons were entitled to admission : but the Crown did not intend to give any right to those, who might thereafter become *homines ejusdem facultatis*, but intended that the succession should be continued by the power incident to all corporations to elect. Had the charter of incorporation nominated every man authorized to practise physic in *London* and given no directions as to the succession, they would have been authorized to continue themselves by election as they have done ; and the charter has done the same thing in substance by incorporating the same persons by a general reference to their character and situation. This avoids all contradiction ; it is consistent with the usage : and according to this construction no one is entitled as a matter

of right but only by election. In making such elections, there is a trust and duty to keep up the body by a choice of learned men sufficient to answer the purposes of the charter; and if this be done, all the interest that the public have is consulted; they have no interest in this or that man being a member of the college; so long as the body is continued and there are proper censors, elects, and other officers, and so long as proper persons are licensed and improper ones restrained, the objects of the charter as far as concerns the public will be attained. We have been pressed however with the dicta of Lord *Mansfield* in *R. v. Dr. Askew*; very great deference is always due to whatever fell from him: but it is sufficient to say that this was not the point then before the Court, the only question there being whether licentiates were of the body.

“ On the other question respecting the validity of the bye-laws, I can hardly add to what has already been said by the Court; and therefore shall only say that I agree with them in thinking the bye-laws reasonable.”

VII. That the Physicians practising in London are invidiously divided by the bye-laws of the College into two orders : one is denominated Fellows, the other constituting by far the majority is designated (and by implication degraded) by the term Licentiates.

ANSWER.—This is a distinction which has existed for threehundred years, and the judgements of Lord Mansfield and Mr. Justice Yates in *Rex v. Askew*, are quite decisive in favour of its legality. The word *fellowship* is found in the Act of Parliament confirming the Charter, and the recorded opinions of the Bench shew, that the Physicians of London were divided into two bodies, the Fellows who granted the licence, and the Licentiates who received it. There can be no just cause of complaint in a term which belongs to the English and to most of the foreign Universities. This allegation is further answered by the judgements of Lord Kenyon and of Mr.

Justice Lawrence in *Stanger v. The President and College of Physicians*, and their decision is confirmed by the opinion of Mr. Justice Ashhurst, in the same cause.

STANGER v. PRESIDENT AND COLLEGE OF
PHYSICIANS. (7 Term Rep.)

ASHHURST, J. "Though this matter has taken a considerable time in the argument, it is now reduced to a narrow compass. The counsel who have argued for the issuing of the mandamus do not contend that a licentiate, as such, does *ipso facto* become a member or a fellow of the college: they only say that any man who is fit in learning and morals has a right to offer himself for examination, without any super-added qualification; and therefore that the bye-law requiring 'that every licentiate, in order to entitle him to offer himself for examination, shall be a doctor of one of the two universities in *England* or that of *Dublin*,' is a void bye-law. It is not denied by counsel who have argued for the rule that the corporation have the right of making bye-laws for the regulation of their own body. And Lord *Mansfield*, on whose authority they ground themselves as in their favour,

said in 4 *Burr.* 2199, ‘ that such bye-laws as
 ‘ only require proper education and a sufficient
 ‘ degree of skill and qualification may be still
 ‘ retained; that there can be no objection to
 ‘ cautions of this sort; and the rather if it be
 ‘ true that there are some amongst the licentiates
 ‘ unfit to be received into any society.’ This
 brings it then to the question, whether the bye-
 law now under discussion is or is not to be con-
 sidered as a bye-law of regulation. It does
 appear to me that in order to ensure a proper
 education and a competence in a learning, there
 cannot be a more likely method than the having
 spent fourteen years in one of our learned uni-
 versities, and, after having been examined by
 persons competent to the subject, having been
 admitted to a doctor’s degree. This it should
 seem would prevent in *limine* the danger of that
 happening, which Lord *Mansfield* complains of,
 namely, of persons being admitted amongst the
 licentiates unfit to be received into that society.
 Indeed the Legislature so long ago as the
 passing of the act of the 14 and 15 *Henry* 8,
 seemed to shew their own opinion how much
 stress ought to be laid on such a kind of test;
 for there, in speaking of country physicians,

the act says, ‘ that no person shall be suffered to exercise or practise in physic through *England* until such time as he be examined in *London* by the president and three elects, and have from them letters testimonial of their approving and examination;’ but then the act goes on with this exception (viz.) ‘ unless he be a graduate of *Oxford* or *Cambridge*, which hath accomplished all things for his form without any grace.’ This shews the opinion of the legislative body of that day ; and the college might think it a very fit model for their imitation in the formation of the bye-law now under discussion, and that it would prevent them from having their time too much broken in upon by improper applications for examinations. I would not be thought to infer that the gentleman now applying is in any degree deficient either in learning or education: but general laws cannot give way to particular cases ; and as this law has been of some standing, we must suppose it has been found to be attended with general convenience, and therefore it should be abided by. I therefore concur in the opinion that the rule for a mandamus should be discharged.”

VIII. That the Fellows have usurped all the Corporate power, offices, privileges, and emoluments attached to the College: that the Licentiates do not participate in these benefits, but are illegally excluded from all the offices, and any share in the management of the Corporation ; and so far is the principle of this exclusion carried, that the Licentiates are not even admitted to the Library or Museum of the College.

ANSWER.—This corporate power, is the power which the Charter and the Act of Parliament confer. The gravest judges of the land have determined in *Stanger v. the President and College of Physicians*, that this power has been legally exercised. It is therefore no usurpation.

The mode of electing the highest officers of the College is determined by the charter itself. That charter was confirmed by act of Parliament, which is strictly obeyed ; and obedience to the laws of the kingdom can be no usurpation.

The charter gives to the College the power of making bye-laws for its own government and for the government of all men of the same faculty practising physic in London or within a circuit of seven miles around it. These bye-laws have been pronounced to be good and reasonable by the highest judicial authority of this country. By them the choice of the other officers of the College is regulated. That regulation therefore involves no usurpation.

The Elects of the College adopting the sentiment lauded by Sir Edward Coke, (2d Inst. 31,) “ that it was a policy of prudent antiquity, that officers should give a grace to the place, and not the place only give grace to the officer,” have been content to choose their President by this golden rule.

The offices of the College are offices of labour and not of profit.

The annual payments to the College Officers
are:—

To the President, under the will of Dr. Hamey	£ 25
To each of the four Censors £20	80
To the Treasurer	20
To the Registrar	40
To each of the two Junior Lecturers £10	20
To a third Lecturer	20
To the Senior Lecturer	32
	237

So that the sum total, if divided by eleven,
(the number of necessary officers of the College,)
would give £21 10s. 10 $\frac{3}{4}$ d. as the emolument
of each.

There are no emoluments belonging to the
Fellowship. The small funds of the College
are derived from the benefactions of former
Fellows; from the proceeds of the licenses
granted; and from an annual contribution made
by the Fellows themselves.

With the exception of a lease of the ground
on which the building now stands, the College
has never derived any pecuniary aid from the
Crown. The incorporated members originally
met to transact the business of the College at
the house of Linacre, (their first president,) and

they continued to do so until Linacre died. By his will he bequeathed his residence to this community, and the College held its meetings there until the house was burnt down at the great fire of London. After this misfortune, the edifice in Warwick Lane was built at the cost of the Fellows; and £25,000 expended in the erection of the present building were raised from the sale of the premises in Warwick Lane which yielded £9000; from £2000 given by the trustees of Dr. Ratcliffe; and from the subscriptions of the present Fellows. So that the existing Fellows of the College have subscribed a much larger sum for its service than they can ever receive from its funds by virtue of any offices to which they can be elected.

The division of the College into two orders which is here made the grand subject of complaint, may be shown to be founded upon those obvious principles which must ever govern the best regulations of civil society. Its justice rests upon its utility, the great principle from which justice derives its merit and moral obligation. Can it be denied that in the profession of Physic, as well as in every other profession, in which large numbers of persons are neces-

sarily engaged and required for the public service, the privilege of practising may be very prudently granted to many who do not and cannot possess every requisite for the government of the profession to which they belong? Can it for a moment be contended, that because a man has been properly admitted as a licentiate of the College, he is *ipso facto* qualified to be elected its President? Must no man be permitted to serve the people in Parliament who is not fit to be a minister of the Crown, and to guide the vessel of the State in every storm and in every danger? In all bodies of men associated for their own government, and for the government of others, is it not shown to be useful by experience and by universal consent, to select a Council in whom the wisdom of direction is presumed to reside? This is the simple and practical principle on which it was directed by the Charter, and enacted by Parliament, that certain parties comprehended under the collective title of *Collegium*, or *Communitas*, or *Fellowship*, should be incorporated for the government of the said "*Fellowship*," "*and of all men of the same Faculty.*"

But the allegation that "the licentiates are

excluded from all the offices of the College, and from any share in the management of the Corporation" is not a correct allegation, because it is not the *whole* truth. It wants that mark and stamp of integrity which the Laws demand in the administration of Justice. "The oath," says Blackstone (Comm. B. 3. 372) "administered to the witness, is not only that what he deposes shall be true, but that he shall also depose the *whole* truth, so that he is not to conceal any part of what he knows, whether interrogated particularly to that point or not." Again, Sir Edward Coke observes that, "the Law taketh a diversity between falsehood in expresse words and falsehood in knowledge or mind." "And herewith agreeth Bracton, that a man may speak the truth and yet be perjured." "*Dicunt quidam verum et mentiuntur et pejerant eo quod contra mentem vadunt.*" And by the ancient law of England in all oaths, equivocation is utterly condemned, for Britton saith *serement est honest et leall quant sa conscience demesne accord a chescun point a la bouche ne plus ne moins, et sil ad discord donqs' est perillous.*" "If equivocation should be permitted tending to the subversion of truth,

it would shake the foundation of all Justice.” Inst. 3. 166. It must be quite clear that the object of concealment in such cases is but to mislead the judgment, and deceive the understanding. It is an auxiliary which honesty and virtue never employ: it may contribute to impose upon the unwary, and to confirm the habitual prejudices of kindred minds, but when strictly analysed it will be found to be essentially a confession of weakness, and an unerring evidence of a defective cause.

It is true that a Physician, licensed to practise in London, is “excluded from the offices of the College, and from any share in the management of the corporation,” so long as he remains in the order of licentiates; but he does not necessarily remain in that order. Licentiates are elected into the Fellowship, and become thereby eligible to every office which the College contains. Several Physicians elected from the order of Licentiates are at this moment Fellows of the College, assist in the management of the corporation, and have been elected to some of its highest offices. There is, therefore, no exclusion.

The library of the College could not be

opened to the Licentiates without incurring expenses, which the College possesses no funds to defray. It results from donations of books by former Fellows of the College, and from purchases made by money subscribed exclusively by the Fellows themselves. It is the property of the Fellowship : but it is accessible by courtesy to the Licentiates, inasmuch as there is not a Fellow of the College, who would not instantly procure from its library any work required for the purpose of research by any Licentiate whom he may have the pleasure of knowing.

The Museum was founded by Dr. Baillie, and remains under the regulations made, and for several years superintended, by the Founder himself.

IX. That there exists no foundation in the Charter, or in the Acts confirming it, for such distinction of orders, and consequent exclusion from all privileges.

ANSWER.—This observation is answered by Lord Mansfield and Mr. Justice Yates in *Rex v. Askew*. It is refuted by the concurrent decisions of my Lord Kenyon, Mr. Justice Lawrence, and Mr. Justice Ashhurst, in *Stanger v. The President and College of Physicians*; and the determination of these great authorities is supported by the judgment of Mr. Justice Grose, delivered in the same cause.

STANGER v. PRESIDENT AND COLLEGE OF
PHYSICIANS.—(7 Term Rep.)

GROSE, J. “This being a motion for a mandamus to a body incorporated by charter, we must see that we are authorised by the charter or the bye-laws to grant the application. On examining the charter, which was confirmed by act of parliament, we find that there was a select

body of eight including the president, and an indefinite number of the commonalty. The election of the president is to be made annually by the college; so also is the election of the four censors. The intention of the crown was to put an end to the mischiefs occasioned by the ignorance of the unskilful practitioners; and for that purpose this corporation was created, with power of making bye-laws, of admitting skilful persons to practise physic, and of preventing all others practising: the great object was to admit only those to practise physic who were (to use the language of the act) ‘profound sad, and discreet, groundedly learned and deeply studied in physic.’ How and when the fellows are to be chosen or admitted is not directed by the charter: it is left to the discretion of the persons named in the charter under the general power given to them of perpetuating themselves and of making bye-laws. The charter is therefore silent both as to the election of fellows, and as to the examination of them before election: but the examination is incident to the power of election. The charter being silent on these heads, and the college having the power of making bye-laws, they have made bye-laws to

ascertain a criterion of fitness of future candidates, by pointing out in some cases the mode of their education, in others the persons by whom they were to be proposed as candidates. One of these bye-laws is objected to as illegal, because it requires a degree to be taken at one of our universities, which (it is contended) is superadding a qualification to those required by the charter : but I think it is only ascertaining a criterion of fitness as has been done most properly in other professions in cases alluded to both at the bar and bench. Then it is said that a licentiate has an inchoate right : if by that *Dr. Stanger's* counsel mean that he has one qualification which when added to others may give him a right of admission, I agree with them : but the college are to judge of other qualifications : if by this inchoate right they mean any thing more, I dissent from them. It is admitted by this application that the college have a right to insist on an examination ; and upon what ground ? as a test of fitness—but though this right is not expressly given to them by the charter, nor is there a word denoting any obligation either to admit or examine, it is incident to their power of judging who is fit to

be admitted. That Lord *Mansfield* thought that they have such a right incidentally is clear from what fell from him in Dr. *Askew's* case, in which he said, 'It is true that the judgment and discretion of determining upon this skill, ability, learning, and sufficiency, to exercise and practise this profession is trusted to the college of physicians : and this Court will not take it from them in the due and proper exercise of it.' The same power that authorises them to judge of fitness, also authorises them to regulate the mode by which they shall judge. They think, of which they are much better judges than we can be, that every man who is to be a candidate ought either to have taken his degree at one of our universities or in Dublin, or shall be proposed by one fellow, or by the president. The bye-laws requiring this do not appear to me unreasonable or inconsistent with the charter any more than requiring a particular mode of education, and in the case so often alluded to, Lord *Mansfield* thought such bye-laws were good ; for when he recommended it to the college to revise their bye-laws, he said 'such of them indeed as only required a proper education and a sufficient degree of skill and

qualification may be still retained." In consequence of that opinion the college have reviewed and altered their bye-laws, requiring in some cases an education at either of our universities or at *Dublin*, in others permitting a nomination of persons as fit to be examined by men whom they deem worthy of such a trust, considering such degree and nomination merely as tests of the persons taking it or named having skill and learning, and being fit to be examined. And in making these bye-laws, I think that the college have shewn a due attention to discharge their duty to the public, and to attain the ends of their institution. Therefore I concur in the opinion already given, that this rule ought to be discharged."

X. That according to one of the bye-laws no Physician can claim admission as a Fellow, unless he has graduated or been admitted *ad eundem* at the Universities of Oxford or Cambridge, where medicine is imperfectly taught; while Physicians, who have graduated at other British or Foreign Universities, celebrated as schools of medicine, are unjustly excluded from the Fellowship by this obnoxious bye-law.

ANSWER.—No Physician practises legally in London except by virtue of the license. A Fellow of the College only practises physic in London by virtue of his license. A Candidate only practises in London by the same authority. The Licentiate by virtue of the license has equally this privilege : but the College admits no claim to the Fellowship from any University. It has given a preference to Graduates of Oxford and Cambridge, because the highest education which the present state of society recognizes in this

country can only be obtained there. It disclaims every other motive. It trusts that these ancient fountains of learning still maintain the character given them by Sir Edward Coke. "*Academiæ Cantabrigiæ et Oxoniæ sunt Athenæ nostræ nobilissimæ, regni soles, oculi et animæ regni, unde Religio, humanitas et doctrina in omnes regni partes uberrimè diffunduntur.*" The College has continued to believe that the best systems of intellectual and moral discipline that have yet been called into real existence are only found united in the Universities of England. To this belief they adhere; and if true, their preference becomes a proof of their integrity.

The College never contemplates the acquisition of medical knowledge either at Cambridge or Oxford; but it does contemplate the acquisition of that intellectual and moral condition which is best adapted to the pursuit of philosophical researches, and to the religious observance of all social duties. The successful practice of physic perpetually involves a just and rapid induction from the simultaneous or concurrent existence of great numbers of minute facts, that can only be appreciated by a mind trained to

minute research, to logical induction, and to mathematical exactness. It is this mental training which the studies of Cambridge and of Oxford are intended to secure.

The social relations under which the Physician is placed, the delicate and complicated conditions under which he is perpetually invited to offer some relief to human misery, render it equally imperative that the highest sense of honour and probity should be demanded and insured. Of this religious and moral training, the discipline of the English Universities has afforded the best security. These are securities which the College of Physicians in the execution of a solemn trust have thought it their duty to demand for the public weal.

The residence which is required for these prime purposes by the Universities of England, leaves a long and ample period, a period of seven years, for the attainment of the highest medical acquirements that can be taught in this or in any country of Europe. This is the period which the Medical Student of Oxford or Cambridge devotes to the study of Physic before the degree of Doctor in that faculty can be conferred upon him. The experience of 300

years has indisputably proved that those high acquirements will be sought wherever they can best be learned, and the student having sought and attained them, returns to Alma Mater for the seal that stamps him as a proper professional candidate for public favour.

The Fellows of the College have full conviction that the moral and mental discipline of an English University, lays the best foundation for professional excellence; and that by the near alliance of the College with the Universities of England, the character of Physicians and of the whole medical profession in this country has been elevated to a higher rank in social estimation than in any other part of Europe. To this opinion they adhere, and they are guided by it. Maintain the academic character of the College and the dignity of the profession will be preserved.

In the Report of the Commissioners appointed to inquire into the state of the Universities of Scotland, Oct. 7th, 1831,

The Commissioners declare,

“That the Students in the Scotch Universities do not reside within the walls of the College or in any place subject to the inspection

and cognizance of University authorities. They reside wherever they choose, and after they leave the class-room, their studies and occupations are not necessarily under the inspection of the Professors. In St. Andrew's and Old Aberdeen it may happen that misconduct on the part of Students will become known to the Professors, although in other respects there can be hardly any inspection of their behaviour or habits. In Edinburgh and Glasgow it may be safely said, that the Professors do not generally know much more of the Students, (except when in their class-rooms,) than of the other youths of these great cities. They seldom know their residences; they have little opportunity of knowing their habits, occupations, or acquaintances; and are seldom brought into contact with them except in the class-room. Further, the Students are not under the charge of any tutors connected with the University. In short, they resort to the College during the hours of teaching in the classes which they attend, and when that attendance is over are lost in the crowds of these populous cities.

“ There is another circumstance that must be noticed in regard to the Scotch Universities.

There are no endowments or establishments connected with them such as Fellowships, for the maintenance of a number of literary men, after their own education is finished, not necessarily taking an active share in the business of instruction, but placed in such situations in order that they may have opportunities for the further prosecution of literary or scientific pursuits, and as a reward for their earlier exertions. There is no encouragement, therefore, to prosecute to any great extent those branches of literature, which do not directly tend to useful objects in life ; and without the strongest natural bias, it is in vain to hope that many will devote themselves to classical literature as their peculiar pursuit, with the zeal exhibited in other countries, when they cannot thereby attain any immediate honour or future advantage. Supposing it to be desirable in principle, to attach as much importance to classical literature as is done in other Universities, it would, at all events, be unavailing to make any such attempt in Scotland, and any schemes for that purpose would only interfere with objects of more general utility and of higher importance.

“ From what we have stated, it is obvious

that the attempt to introduce into the Scotch Universities any system of government or instruction similar to that which subsists in the English Universities, would be inconsiderate and hurtful.

“ In all the Universities in Scotland, till very recently, and in some of them even at the present time, the Degree of Master of Arts, that of Bachelor having fallen into disuse, has been conferred almost as a matter of form, not being withheld from any student willing to pay the fees, which have been regarded as one branch of the revenues of the College. In general there was either no examination, or a very slight one, not calculated to ascertain the qualifications of the Candidate. This mode of bestowing degrees was sufficient to lower them in public estimation. They ceased to be objects of solicitude, and in general have been viewed with so little respect, that at Edinburgh and Glasgow, comparatively few individuals have of late applied for them.”

The College of Physicians acknowledges no preference but that which moral and intellectual excellence, which talent, and learning, and science, and knowledge of men and of manners,

must, and ought to command. But if the commissioners appointed by His Majesty to inquire into the state of the Universities of Scotland, had studiously endeavoured to frame their report so as to present a complete vindication of the preference given by the College of Physicians to the Graduates of Oxford and Cambridge, they could not have been more successful. The inferiority is placed on record, and the College is vindicated.

But the College prefers the Graduates of England to those of France, and it may therefore be asked, whether as high an education cannot be obtained in the capital of that kingdom as in the Universities of this realm. If education only comprehended the acquisition of learning and science, the answer would be in the affirmative. But education also comprehends the moral and religious discipline of the mind. In this discipline the capital of France is comparatively defective. Religion and morality are there less ardently cultivated than in the Universities of England. The morality of Paris is less severe than that of London. There is a currency in Paris, the value of which is far inferior to the sterling of England.

In Paris, some of the most brilliant achievements of the human understanding have been effected. Talent is there eminently displayed. In erudition and literature, and in the wide field of scientific research, in the arts that give grace of external form and ornament to polished nations, the French have no superiors. But the moral discipline of the mind in a Paris education is far surpassed by that of an English University. The fact is indisputable. There is no knowledge in physic, nor in the sciences connected with it, that may not be obtained in the University of Paris. The French physician may be completely educated there. But it does not therefore follow that a Paris degree granted to an English Student should be placed on an equality with the degrees which the English Universities confer.

If an English medical Student, whose industry is usually insured by the necessity of exertion for his success and existence, after three years of study at Oxford or Cambridge, proceed to Paris for the acquisition of medical knowledge, he goes thither with that intellectual and moral training which the College believes to be an essential ingredient in the best medical education.

If on the contrary, an English Student who has not been educated at an English University, visits the capital of France for the acquisition of medical knowledge, he may return with a medical degree ; but he goes thither without that moral and intellectual discipline for which the usual residence at Oxford or Cambridge is the best security that has yet been offered to the public, and which the College believes to be an essential ingredient in the best medical education. The difference is therefore obvious. In the one case the intellectual and moral discipline so favourable to future excellence exists, in the other it is wanting.

These are the principles which determine the preference given by the College to the graduates of Oxford and Cambridge above those of the University of Paris. On these principles the preference is just. It demands no other vindication.

XI. That the College was admonished from the Bench, by the Lord Chief Justice Mansfield, to amend their bye-laws in reference to the admission of Licentiates into the Fellowship: that, influenced by this censure, the College formed other bye-laws, deceptive in their character, which, whenever they have been acted upon, have tended still farther to depress and injure the order of Licentiates.

ANSWER.—The bye-laws of the College of which Lord Mansfield spoke, were absolutely exclusive: for on the 12th of February, 1674, a letter was addressed to the College of Physicians by the King, directing that no Physician should be admitted to the Fellowship, unless he

had received his education at Oxford or at Cambridge, or had been there incorporated.

“CHARLES R

“Trusty & welbeloved wee greet you well
Whereas we have been informed That there are several pretended Physicians & Doctors graduated in the Universitys beyond the Seas who by indirect means endeavour to be received into that our Royal Colledge as Honorary Fellows, without incorporation into either of our Universities or previous Examination & approbation, according as it is expressly required by y^e Statutes to y^e great prejudice of y^e ffellows of or said Colledge & their Successors & of the Priveledges & immunityes granted to them by or Royal predicessors & orself Wee having taken the same into or Royal Consideration have thought fit *to signifye or pleasure* to you, & doe accordingly *direct you* not to admit any person whatever as a Fellowe of the Society & to enjoy y^e priveledges of or s^d Colledge that hath not had his Education in either of or Universityes of Oxford or Cambridge kept his Act for D^r in Physick & don his Exercises accordingly, or that is not encorporated & licenced

there haveing first taken the Oathes of Allegiance & Supremacy, & haveing been by you afterward examined & approved of according to the Statutes And to the Intent this or pleasure may be the better observed wee doe likewise *hereby require you* to cause these or Letters to be entered upon the Registe of or said Colledge & so wee bid you ffarewell, Given at or Court at Whitehall Febr. 12th 1674 in the 26th year of or Reighn.

“ T. WILLIAMSON.”

It was this absolute exclusion to which Lord Mansfield objected. The College had obeyed the mandate of the King; but after Lord Mansfield had delivered his judgment, the bye-laws of the College were, according to his Lordship's advice, reviewed by the first counsel in the kingdom, and modified as they now exist. In their present form they have been declared to be good and reasonable bye-laws by the highest legal authorities of England; by the concurrent judgment of all the judges of the court of King's Bench when Lord Kenyon presided.

Under one of these bye-laws, which gives to

the President the privilege of proposing annually one Licentiate to be elected to the Fellowship, several most eminent Physicians have been admitted into the College. They are among its distinguished ornaments, and it is difficult to understand by what kind of rhetoric this admission can be shewn to "have tended still farther to depress and injure the order of Licentiates."

XII. That the College demand and receive a large sum of money from the Fellows and Licentiates, for the supposed privilege of practising as Physicians, within a circuit of seven miles round London, and that they do not and cannot protect them in this privilege.

ANSWER.—

	£	s.	d.
The payment for the licence is, ...	56	17	0
From which is paid for Stamp	15	0	0
President's fee, for three examinations and admission	2	0	0
Four Censors' fees, for three examinations	4	0	0
Registrar for minutes of all examinations	1	0	0
Treasurer	0	15	0
Beadle	1	5	0
Porter	0	5	0
	24	5	0
	32	12	0

leaving the sum of 32*l.* 12*s.* to be added to the College funds.

The number of licenses granted by the College from the 1st of January 1823 to the 31st

of December 1832, is one hundred and seventeen, and therefore $32l. 12s. \times \frac{11}{10}$, or 381*l.* 8*s.* 4 $\frac{1}{4}$ *d.*, will represent the average annual revenue of the College from this source.

In the 5th of James I., in consequence of letters patent issued by His Majesty, and directed to Thomas Lord Ellesmere, Lord Chancellor of England, and to sir John Popham, Knt., Lord Chief Justice of England, they called unto them Sir Thomas Fleming, Knt., then Lord Chief Baron of His Majesty's Court of Exchequer, Sir Thomas Walmsley, and Sir Peter Warburton, Knts., two of His Majesty's Justices of the Court of Common Pleas, and Sir David Williams, and Sir Lawrence Tanfield, Knts., two of His Majesty's Justices of the King's Bench, who after due consideration of the charter of King Henry the 8th, and of the Acts of Parliament relating thereto, met at York House, on the 1st of May 1607, and resolved several questions concerning the same.

One of the questions propounded was, "whether the College may not justly take upon every admission a reasonable sum of money for the better maintenance and defraying of necessary expences, as in other corporations?" The

answer of this learned body was unanimous, "They all held that the College might take such necessary sums."

Mr. Justice Yates too, in *Rex v. Askew*, said "the taking money of the Licentiates has been urged as an argument on their side," (i. e. in favor of their right to the fellowship) "but taking their money does not prove them to be members of the College. If wrongfully taken from them they may recover it."

With regard to protection, it may be answered, that long since the Charter was granted, certain privileges have been given to two other corporate bodies, by which the power of the College to protect its Licentiates has been incidentally impaired, since persons prosecuted by the College for illegally practising, have been enabled to escape punishment, by pleading that they practised under some other authority; but it can hardly be charged upon the College as a crime, that it has not exercised powers which it never possessed.

XIII. That the Graduates of Oxford and Cambridge are obliged to be members of the established Church of England, and, consequently, all Dissenters are excluded from claiming the Fellowship ; this your Petitioners consider as a grievous injustice, and an act of intolerance unbecoming the present age.

ANSWER.—No man can claim the right of being admitted a Fellow. And no man is excluded from the Fellowship, because he is a Dissenter. Neither Fellows nor Licentiates are ever required on their admission, to subscribe to any religious creed, or asked any questions concerning their religious opinions. The Graduates of Oxford and Cambridge are obliged to be Members of the Established Church by the laws of the English Universities, but under the existing bye-laws, several Physicians have been elected Fellows, who conscientiously dissent from the Established Church, and an avenue to the Fellowship of the College is open

through the order of Licentiates to persons of every religious sect.

XIV. That these invidious bye-laws, made in the spirit of corporate monopoly, have involved the College in continued litigation, and created a jealousy between the Fellows and Licentiates, discreditable to the members of a liberal profession.

ANSWER.—Does this mean monopoly of the Fellowship or the monopoly of the business of the profession? If the monopoly of the Fellowship is intended by these words, it is admitted that a preference is given to the degrees of the English Universities, but persons who have graduated at other Universities, are not excluded, as the following regulations prove*.

“De Permissorum Electione extraordinaria in Socios.

“1. Quandoquidem fieri potest ut inter Per-

* Printed by order of the House of Commons.

missos numerentur viri quidam egregii, et de re medicâ præclarè meriti, quos statutum nostrum de Sociis in ordinem Sociorum cooptari vetat; statuimus et ordinamus ut non obstante statuto de Sociis, liceat Præsidenti quotannis nec sæpiùs in Comitii Minoribus Ordinariis mense Martis habitis, nisi gravi aliquâ de causâ Comitii Majoribus approbandâ alio mense visum fuerit; unum, pro suo arbitrio, è Permissis qui decennium compleverit à tempore admissionis, utpote morum integritate, doctrinâ et artis medicæ peritiâ insignem, in Socium approbandum Censoribus proponere; qui si Præsidentis et Censores aut eorum major pars, suffragiis per pilas occultè acceptis consenserit, in Comitii Majoribus Ordinariis postridiè nativitatis Divi Johannis Baptistæ habitis, à Præsidente in Socium eligendus proponatur; et si major pars Sociorum præsentium suffragiis per pilas occultè acceptis, consenserit, in Societatem nostram quam primum admittatur.

“II. Non licebit Præsidenti alterum iisdem Comitii Minoribus approbandum proponere, sive vir propositus approbatus fuerit, sive rejectus.

“III. Quicumque ità è Permissorum numero

in ordinem Sociorum approbandus proponatur, eum approbandum proponat Præsident in Comitii Minoribus hisce verbis:—‘Com-mendo vobis A.B. qui decennium complevit ex quo tempore in Permissorum numerum ad-missus est; quem, propter egregiam morum probitatem, doctrinam, et singularem in arte medicâ peritiam, omninó dignum censeo, qui, suffragiis vestris priùs approbatus, eligendus in Socium proponatur Comitii Majoribus Ordinariis postridiè nativitatis Divi Johannis Baptistæ habendis.’ Et in Comitii Majoribus his verbis: ‘Propono vobis A.B. propter egregiam morum probitatem, doctrinam, et singularem in arte medicâ peritiam, in ordinem Sociorum eligendum.’

“IV. Non licebit Propræsidenti vel Præsidentis vicario hoc officio fungi.

“V. Liceat porro cuilibet Sociorum in Comitii Majoribus Ordinariis, postridiè Divi Michaelis habendis, aliquem qui annos septem integros in numero Permissorum fuerit, annum-que ætatis suæ tricessimum sextum clauserit, examinandum proponere.

“VI. Nemo verò aliquem è Permissorum numero ità examinandum proponat, nisi priùs

in Comitiiis Majoribus postridiè Divi Johannis Baptistæ proximè habitis suum consilium Collegio palàm exposuerit.

“VII. Qui Permissum aliquem examinandum proponit his utatur verbis :—‘Liceat mihi proponere Præsidenti et Collegio virum egregium, A. B. qui annum ætatis tricesimum sextum clausit, et qui ultra annos septem Medicinæ facultatem exercuit, ex quo tempore in Permissorum numerum admissus fuit ; et quem scio esse aptum habilem et idoneum tam Moribus quam Doctrinâ, qui in Societatem nostram eligatur.’

“VIII. Is adeo, si consenserit major pars Sociorum in illis Comitiiis præsentium, juxta formam pro Candidatis usitatam à Præsidente vel Propræsidente, et Sociis in tribus Comitiiis Majoribus Ordinariis examinetur : et si in singulis examinationibus à majore parte Sociorum præsentium in illis Comitiiis approbatus fuerit, suffragiis per pilas occultè acceptis Comitiiis Majoribus Ordinariis proximè insequentibus, à Præsidente vel Propræsidente proponatur in ordinem Sociorum admittendus : et si consenserit major pars Sociorum in illis Comitiiis præsentium, suffragiis per pilas occultè acceptis,

quam primùm commodè fieri potest, admittatur, dummodo nec lex terræ nec ullum statutum Collegii nostri eundem ad illud beneficium accipiendum inhabilem reddiderit.”

If monopoly of official emoluments in the College be meant, there are none to enjoy. The College of Physicians is probably the poorest corporation in His Majesty's dominions. If the monopoly of practice in London is meant; the extensive practice of a large number of Licentiates is a sufficient answer. If the monopoly of offices either about the court, or in establishments under the immediate direction of the government be referred to, the answer is obvious. The licentiates are excluded from no offices of emolument which the government of the country can confer. At this moment one half of the King's Physicians in Ordinary are Licentiates. The Medical Officers at the head of the Army and Navy Medical Boards are, or have been, Licentiates. The physicians of Greenwich Hospital are Licentiates. The physician of Chelsea Hospital is a Licentiate.

The College has with little, or with only temporary success, endeavoured from time to

time, to discover some mode of conciliation that would be consistent with its paramount duty of sedulously urging upon physicians, the advantages and the necessity of an education of the highest class.

In some of the vocations of life, prosperity and conquest, and triumph, are so evidently dependent upon the perfect concord of many minds, that concert and unanimity of action are secured by the very necessity of their existence. The victory cannot be gained without their concurrence. They are conditions of safety, and the prelude and warrant of success. The pernicious effects of disorder are so painfully proved, and are so sensibly and acutely felt, that every movement must be computed and adjusted and measured, so that the harmony of the whole be perfect, and the acts of immense numbers present all the precision and singleness which individuality could secure.

In the profession of Physic this is not the case: and although there be an honorable rivalry for public favor, that favor is courted or commanded by the separate influence of manners and of talent, which each individual may possess or display. But in so large

a body as the Physicians of London, some Fellows and some Licentiates must be expected to fail of attaining professional eminence. Those of the latter class who have not succeeded, may be apt to attribute their failure to their not being Fellows of the College. But it may be worth their while to consider, that many of the Fellows have met with as little success, and that the monopoly of failure does not belong to the Licentiates.

Disappointed ambition rarely finds the source from which its failure springs. It too vainly seeks among the outward accidents of life what might be discovered within. If the prize be lost, with what painful reluctance are the claims of the victor acknowledged. If outstripped in the race, it is not that the speed is defective, but some adverse spirit crossed the way. All that is external is accused and censured and condemned, until whatever the fancy associates with defeat, becomes the unhappy subject either of malevolence or of envy.

The successful Licentiates have not admitted that they are subjected to any practical disadvantage; but it is true that the early friendships often formed at an English University between

the professional student and those who may be destined to give grace and ornament to polished society, will insure to him the favour and protection of that society in the progress of life. If at Eton or at Westminster, at Harrow or at Winchester, they have mixed together in their sports and their pastimes, if they have toiled together in their studies, if their pursuits have been identical, if they have been united in their pleasures, in their feelings, in their habits, in their learning, if they carry their friendships to Cambridge or to Oxford, there are no regulations which any government or any college could make that would dissolve this union or impair its effects. It must ever secure academic distinction in London, whether marked by any name or designated by none. It is a preference that flows from the laws of our nature, and cannot be subverted by legal enactments. If the present Licentiates were invested with the government of the College, and the present Fellows were made Licentiates, this preference would be wholly undisturbed; it rises from so deep and clear a spring that it cannot be troubled.

XV. That your Petitioners with deference submit that the College of Physicians, as at present constituted, is wholly inadequate to the due regulation of the Medical Profession in this country, and the protection of the public; and further, that the Charter of the College in no way provides for the practice of Physicians in the several counties of England and Wales.

ANSWER.—The first member of this allegation is proved to be false by a single fact; namely, that the Medical Profession is more exalted in this country, than in any other country of Europe.

The second accusation which this paragraph of the Petition involves, is the want of that protection which should be afforded to the public by the College against unskilful practitioners.

But the public do not complain : and the capital of England is the healthiest capital in Europe.

The third is an abundant proof of the candour with which these accusations are preferred. It is another example of that crafty concealment so censured by the best expounders of English law. For although it is true that the Charter limits the jurisdiction of the College to London and its suburbs, the act of parliament confirming that Charter contains the following enactment.

“ And where that in Dioceses in *England*, out of *London*, it is not light to find alway Men able sufficiently to examine (after the Statute) such as shall be admitted to exercise Physick in them, that it may be enacted in the present Parliament, That no Person from henceforth be suffered to exercise or practice in Physick through *England*, until such time as he be examined at *London*, by the said President, and three of the said Elects ; and to have from the said President or Elects, Letters Testimonials of their approving and Examination, except he be a Graduate of *Oxford* or *Cambridge*, which hath accomplished all things for his Form, without any Grace.”

It is therefore evident that there are two powers granted by the Act of Parliament that confirmed the Charter. One *to the College* to prevent unskilful persons from practising physic in London and its suburbs ; and the other *to the President and any three of the Elects* to license Physicians, whose competency they have proved by examination, to practise physic in any part of England ; the Act declaring that no person except he be a Graduate of Oxford and Cambridge shall practise in physic through England without such license. The offence of practising without a license in London or within seven miles thereof is punishable by action at law at the instance of the College, and the College is bound, and is ever ready to protect the public, as far as the power with which it is invested will permit.

The offence of practising without a license beyond this district is a misdemeanor and punishable by common information.

THE preceding pages have been written and compiled to defend the College of Physicians against the charges of *having violated* the Charter of Henry VIII., and of having failed to discharge the duties imposed upon it by the King and by Parliament. It has been clearly demonstrated that the College was instituted for the purpose of preventing unskilful persons from practising physic : and it therefore necessarily follows, that in order to prove a violation of the trusts which the charter created, or a heedless inattention to its objects, the College must either be shown to have permitted the unskilful to practise physic, or to have refused its license to skilful physicians. Where and who are the unskilful unlicensed, practising as Physicians, whom the College, in the present state of the law, could prosecute to conviction ? Where and who are the unskilful whom the College has licensed ? Where and who are the skilful to whom the license of the College has been refused ? The College may challenge the petitioners to answer these questions, and to exhibit their proofs. If they cannot or do not answer and exhibit their proofs, their silence

will condemn them ; and the injustice of their own accusation will stand admitted by the petitioners themselves.

But the observations herein contained are not intended to vindicate every act, or every existing regulation of the College. The perfection of human institutions is a delightful idol of the fancy that can never be realised. It is an inviting and endearing vision that recedes as it is approached ; a term that can never be attained. Its apparent distance varies directly, as the advancement of learning. In the infancy of science it may appear within the mind's embrace, but in proportion as natural knowledge is successfully cultivated, the circle of science is extended, and the horizon, filled with bold outlines of nascent inventions, and beams of dawning discoveries, perpetually retreats before us until we are lost in the contemplation of the endless expanse by which we are surrounded, or appear to be navigating in so little and so frail a bark, that we at once recognise the arrogant pretensions of human weakness. The College of Physicians pretends to no exemption from the imperfections of civil institutions ; but is fully sensible that as all laws and ordinances

ought to be framed in accordance with the spirit and genius of the time and country in which they are enacted, so it is perfectly just that they be modified by the genius and spirit of succeeding ages. If the conditions of our social relations be now very different from those which existed at the beginning of the sixteenth century, it may fairly be presumed that some changes will be requisite to adapt institutions then first called into existence, to the intellectual necessities of the present day. But there is an immeasurable distance between adaptation and subversion. And although it be utterly impossible for error to acquire any title to respect by reason of its antiquity, it is a safe precept to proceed very cautiously in changing what the collected wisdom of past ages may have established or sanctioned. Alteration and improvement are by no means synonymous: and it is so much easier to condemn than to reform, that it is a virtue of old institutions to be slow in their decisions, lest future experience should unhappily demonstrate that they had mistaken change for amendment. The College of Physicians has proceeded, and is proceeding, with a revision of its laws, which, it may be confidently

predicted, will be productive of two important modifications : a restriction upon the admission of Graduates of the English Universities to the Fellowship of the College, and a greater facility for the election of Licentiates ; for it is the unanimous voice of the College, that every Licentiate, educated as a Physician, who may become honorably distinguished by professional eminence, or whose labours may have led to useful discoveries in medical science, should be invited to the Fellowship ; but the College will never concede to a threatening adversary one single privilege which it is bound, as a national establishment, to withhold.





